UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	**Case No.: 3:21-CR-00288-4**
	)	**CHIEF JUDGE CAMPBELL**
ADAM CAREY	)	

NOTICE OF SUPPLEMENTAL AUTHORITY FOR MOTION FOR NEW TRIAL BASED ON IMPROPER, INADMISSIBLE, EXTRANEOUS, AND PREJUDICIAL EXHIBITS BEING UNCONSTITUTIONALLY PROVIDED TO THE JURY DURING <u>THEIR DELIBERATIONS</u>

COMES NOW, Adam Carey, by and through counsel, John Bailey and Ben Perry, and hereby offers the following supplemental authority for his previously tendered motion for this Honorable Court to grant him a new trial (DN 496 - SEALED).

In support of this motion, counsel state the following:

1. In *United States v. Green*, 2024 U.S. App. LEXIS 21609 (3rd Cir., Aug. 27, 2024), the court reversed the defendant's conviction and remanded his case for a new trial based on the district court's failure to grant a motion to sever. In so doing, the court made several rulings relevant to the issues before this Court in Adam Carey's motion for new trial based on inadmissible exhibits being provided to the jury during their deliberations.

2. The court held that it violates a defendant's Fifth Amendment right to a fair trial "when evidence that the jury should not consider against a defendant and that would not be admissible if a defendant were tried alone is admitted against a codefendant." *United States v. Green*, 2024 U.S. App. LEXIS 21609, *11, *quoting*, *Zafiro v. United States*, 506 U.S. 534, 537

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(1993).[1]   That is precisely what happened to Adam Carey when evidence that was unquestionably

inadmissible against him was given to the jury and considered by them, during their deliberations.[2]

The reasoning of the Third Circuit is logically persuasive and relevant to the issue before this Court

right now. The same result should follow. Adam Carey should receive a new trial.

WHEREFORE, for the foregoing reasons, as well as those presented in his previous

pleadings on this issue, Adam Carey again requests this Court to grant him a new trial.

DATED THIS 28th DAY OF AUGUST, 2024.

Respectfully submitted,

/s/ John Bailey
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1 The court also recognized that it violates a defendant's right to a fair trial "when defendants assert mutually antagonistic defenses ... (that) go beyond finger-pointing; instead, they resemble a triangular prosecution between the Government, (and the co-defendants).   *United States v. Green*, 2024 U.S. App. LEXIS 21609, *11, *23.   That also occurred here as one of the co-defendant's attorneys stated to the jury that Adam Carey deserved to be killed and he would do it himself. But, that issue is not before the Court in the current motion for new trial.

2 Carey exhibit three, which was improperly provided to the jury during their deliberations, is the unredacted recording of co-defendant Bryon Brockway and government informant, David Conaway.   Carey exhibit four is the transcript of the recording contained in Carey exhibit three. Carey exhibits three and four were not admitted into evidence. (DN 450, Exhibit and Witness List, p. 10).   In both of those exhibits, Adam Carey is specifically named as the person with Bryon Brockway when Holly Williams and William Lanway were killed.   Providing the jury with those two exhibits expressly violated the rule of *Bruton v. United States*, 391 U.S. 123 (1968).

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/s/ Benjamin H. Perry

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has either been hand delivered, sent as an attachment via electronic mail, sent via the Court's CM/ECF filing system, *or*, if not registered, sent U.S. Mail, postage prepaid, to all parties of record in this matter, including but not limited to:

> Robert E. McGuire
> Brooke C. Farzad
> Assistant United States Attorneys
> 719 Church Street, Suite 3300
> Nashville, TN 37203

this 28th day of August, 2024.

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s/ Benjamin H. Perry

BENJAMIN H. PERRY
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